

GRADY C. PRICE, JR.

IBLA 74-227

Decided September 5, 1974

Appeal from decision of Fairbanks District and Land Office, Bureau of Land Management, rejecting homesite application to purchase and canceling homestead claim (F-680).

Affirmed.

Alaska: Homesites--Alaska: Possessory Rights--Settlements on Public Lands

A homesite application, based upon a transfer of the improvements from the settler to the applicant must be rejected, since a possessory right in a settlement claim cannot be transferred so as to vest in the transferee rights under the public land laws.

Administrative Authority: Estoppel--Federal Employees and Officers: Generally--
Federal Employees and Officers: Authority to Bind Government

Erroneous advice by Bureau of Land Management personnel cannot create any rights not authorized by law.

APPEARANCES: Fred G. Shott, Fairbanks, Alaska, for Grady C. Price, Jr.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Fred G. Shott has appealed from a decision, dated January 7, 1974, rendered by the Fairbanks District and Land Office, Bureau of Land Management (BLM), which rejected an application to purchase approximately 5 acres under the homesite law, 43 U.S.C. § 687a (1970), and which stated that the settlement claim of Grady C. Price, Jr. would be canceled when the decision became final.

On January 2, 1968, Grady C. Price, Jr., filed a notice of location with BLM for an area of 160 acres more or less. BLM furnished him with a proper metes and bounds description which he embodied in a revised notice of location, filed January 23, 1968, with BLM. The record indicates that although Price, in conformity with the homestead laws, had built a habitable house on the land and had resided thereon for the prerequisite period, no cultivation had been performed during the first three entry years. Nevertheless, the possibility of obtaining a 5-acre homesite was indicated.

On January 22, 1973, there was filed with BLM a "Limited Power of Attorney" from Price granting Robert Miller and Fred G. Shott authority to act for him with respect to his homestead settlement claim. On that same day, a relinquishment signed by Shott, on behalf of Price, was filed with BLM, relinquishing the homestead claim of 160 acres, less 5 acres included in an accompanying homesite application, also signed by Shott purportedly on behalf of Price. As indicated earlier, BLM, by decision of January 7, 1974, rejected the homesite application. The decision recited in part as follows:

The records are not clear as to why Mr. Price was unable to file an Application to Purchase or a relinquishment on his own behalf.

There is no authorization by which an Attorney-in-Fact may file a Final Proof or Application to Purchase under the Alaska Settlement Claims Laws for an Entryman or Settler. 43 CFR 2511.3-4(d) states in part, "Final proof must be made by the entryman (sic) personally or their widows, heirs, or devisees, and cannot be made by agents, Attorney's-in-Fact (sic), administrators or executors," (Emphasis supplied). Also, 43 CFR 2563.2-1(c) [1/] states in part, ". . . . an application need not be under oath but must be signed by the applicant. . . ." (Emphasis supplied).

Therefore, Mr. Fred Shott is not authorized under the regulations to submit an Application to Purchase for the applicant, Mr. Grady C. Price, Jr. It is also noted that the Statutory Life of the Homestead Entry had been expired for a period of 20 days before the Application to Purchase was filed.

Accordingly, the subject application to purchase a homesite must be, and is, hereby rejected. This settlement claim will be cancelled when this decision becomes final.

1/ The correct citation is 43 CFR 2563.2-1(e).

Shott's appeal from that decision states that in January 1970, he purchased the homesite claim from Price after they were assured by his own attorney and BLM personnel "that this would be perfectly legal and there would be no problems." Shott also stated that "[w]e have tried numerous times to contact Mr. Price, but to no avail. We have no idea where he is." Shott was also concerned that BLM waited almost a full year to tell him the application was filed 20 days late. Shott also stated that in good faith he had invested some \$ 2200 in the property.

All the considerations cited in the BLM decision as grounds for rejection of the homesite application are correct. Moreover, a possessory right in a settlement claim cannot be transferred so as to vest in the transferee rights under the public land laws. See Kennecott Copper Corp., 8 IBLA 21, 79 I.D. 636 (1972).

Shott's contention that BLM employees misled him and Price to believe that the transfer was legally effective is unsubstantiated in the record. Even if it were true, erroneous advice by BLM personnel does not create any rights not authorized by law. See Arland E. Purington, 10 IBLA 118 (1973); Foster Mining and Engineering Co., 7 IBLA 299, 79 I.D. 599 (1972); Utah Power and Light Co., 6 IBLA 79, 79 I.D. 397 (1972); R. E. Hibbert, 8 IBLA 379 (1972); Rudolph Chase, 8 IBLA 351 (1972); William Henry Weaver, 8 IBLA 313 (1972); Alaska District Council of the Assemblies of God, Inc., 8 IBLA 153 (1972); cf. Superior Oil Co., 12 IBLA 212 (1973).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

